In the High Court of Punjab and Haryana, Chandigarh.

C.W.P. No. 13678 of 2000

Date of Decision: 12.12.2007

Northern Railway Catering and Vending Contractors Association (Registered), Ferozepur Division, Ferozepur.

…Petitioner

Versus

Union of India and Others.

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Amit Rawal and Mr. Sanjiv Ghai, Advocates
for the petitioner.

Mr. P.K.Dutt, Advocate
for respondents No.1 to 4.

Mr. Gourab Banerjee, Senior Advocate
with Mr. Deepak Thapar and Mr.Saurav Aggarwal, Advocates
for respondent No.5.

RAJESH BINDAL, J.

The challenge in the present petition is to the Commercial Circular No. 15 dated June 24, 1999 (Annexure P9) issued by Ministry of Railways Board providing for revision for rates of catering and consequential increase in the licence fee. The same was made effective from July 1, 1999.

The petitioner, in the present case, is an association of catering and vending contractors of Ferozepur Division of Northern Railways. The members of the petitioner-association are running their stalls, trolleys, trays and shops at various railway stations of Ferozepur Division for selling of

snacks, aerated water, tea, coffee, meals, biscuits, juice, puri, pakoras etc. The members of the petitioner association were granted various vending contractors for which agreements were duly signed. The grouse in the present petition is to the revision of the licence fee during the pendency of agreement.

In reply, the claim made by the petitioner association is sought to be contested with the plea that the revision is in terms of the clause of the agreement, which enables the respondents to revise the rates and further that the impugned circular No.15 of 1999 stood superseded by a fresh policy in 2000 and accordingly, the petitioner without challenging the new policy now did not have any grouse subsisting. It is further pleaded that circular has in fact been challenged before the Kerala High Court where the same was upheld and even the appeal against the same was dismissed by Hon'ble the Supreme Court.

I have heard Mr. Amit Rawal, Advocate, learned counsel for the petitioner, Mr. P.K.Dutt, Advocate, learned counsel for respondents No.1 to 4 and Mr. Gourab Banerjee, Senior Advocate, for respondent No.5 and with their able assistance have perused the paper book.

Learned counsel for the petitioner has argued that the impugned circular No.15 of 1999 does not apply to the members of the petitioner association for the reason that same is applicable only for the refreshment rooms and in case of none of the members of petitioner association, licence has been granted for refreshment room. Further it is submitted that even if it is assumed that the impugned circular is applicable to the petitioner, the increase proposed thereon is exhorbitant and arbitrary, whereas there was no increase in the rates for sale of the commodities charged by them, the licence fee was increased. The members of the petitioner association are not even making that much of profit on turnover as the licence fee is sought to be recovered by the respondents, which as per the impugned circular is calculated as percentage of the turnover.

On the other hand, learned counsel for the respondents primarily submitted that the challenge to the policy has been upheld by a Division Bench of Kerala High Court in ***W.A. No. 3044 of 2001 Indian Railway Caterers' Association v. Union of India and others,*** which judgment has further been upheld by Hon'ble the Supreme Court in ***N.B. Krishna Kurup v. Union of India and others (2005) 12 Supreme Court Cases 261*** and in the light thereof, nothing survives in the present petition and the same deserves

to be dismissed.

On the objection having been raised by learned counsel for the petitioner to the effect that the circular under consideration before Kerala High Court was No.16 and not No.15, which is sought to be challenged in the present petition, it has been clarified by learned counsel for the respondents that in fact it was by an error mentioned as circular No.16, otherwise circular No.16 was not under challenge. This is quite evident from the fact that the judgment discusses Catering Policy of 1999 which is subject matter of dispute in this petition an the same was issued by circular No.15 dated June 24, 1999. Circular No.16 has no relation whatsoever with the catering as the same is concerning with the use of eco friendly disposal packing material in the catering service. This circular does not have any effect on the licence fee. Perusal of circular No.16 substantiates the plea raised by learned counsel for the respondents and accordingly now the issue is being considered as to whether the Catering Policy of 1999 issued vide circular No.15 dated June 24, 1999 has already been considered in the aforementioned judgments or not.

A perusal of the judgment of Kerala High Court in ***Indian Railway's case*** *(supra)*, shows that in para 24 thereof, though circular number is mentioned as 16 while referring to the subject, it was clearly mentioned that the same was revision of catering tariff for standard meals, tea, coffee and mineral water. The increase was to be effective from July 1, 1999. It is further noticed that in Clause 5 thereof fee was also sought to be revised as percentage of the turnover. The same is found in the circular impugned in the present petition.

Accordingly, it is evident that the circular under consideration before Division Bench of Kerala High Court in ***Indian Railway's case*** *(supra)* was same, which is impugned in the present petition and the issue regarding non-applicability of the judgment on the ground that different circular was under consideration has no merit. The challenge to the Catering Policy, 1999 was negatived by Division Bench of Kerala High Court in the following terms:-

> “29.....Nevertheless, as regards Ext. P4, the contentions could be examined. The first argument is that there is hindrance to fundamental rights envisaged under Article 19(1)(g) of the Constitution. But it had not been substantiated by facts or figures. The contention of the Administration that the contracts gave them right to review the fee structure, during any time during the contract, has not been controverted. Also the reasons show that

there was increase in the price of commodities supplied, and the increase in the licence fee has been fixed taking note of the above circumstance also. The argument that catering is a service, it cannot be utilised as a proposition for making a profit, cannot come from a contractor, since the complaints if at all have not come from the persons who might be aggrieved about it. Likewise the principles of legitimate expectations have little place in area of commercial contracts. On the other hand the granting of the reliefs would result in unjust enrichment to the catering contractors and none else. There is also materials to show that the revised policies had come to operation after discussion at the highest levels and has been applied on all India basis. The criticism in the writ appeal (W.A. No. 3044/2001) that the Administration has confused between annual sales turnover and annual profit is misplaced. This is because from the very inception as we see it, the fee had been fixed on the turnover assessed. There has been only an increase in the percentage. It is evident that the basic yardstick remains as such, and unaltered. The submission that the parties to the contract were unequal and inferences are to be appropriately drawn, also may not be relevant or applicable. We are, for these reasons, not inclined to interfere in the matter and W.A. No. 3044/2001 is hereby dismissed and catering policy 1999 is upheld".

In further appeal against the aforesaid judgment of Kerala High Court, Hon'ble the Supreme Court divided the same in a bunch of two groups. This case is pertaining to group 'B' in which the issue of revision of licence fee was considered in terms of Catering Policy 1999. The appeals were disposed of by Hon'ble the Supreme Court in following terms:

"10. As the writ petitions had been filed by the Indian Railways Caterers Association representing the caterers providing catering services in the Railways, we are not in a position to ascertain the existing arrangement which has been arrived at by the Indian Railways/IRCTC. Mr. Gourab Banerjee, learned Senior Counsel appearing for IRCTC has divided the existing licensees into four categories, which are as follows:

"*Category I*

All cases where licences granted to erstwhile licensees have expired/not been renewed, after which fresh licences have been granted by IRCTC through financial bidding process.

Erstwhile licensees do not/shall not have any right of renewal of licence.

Category II

In cases where licences granted have expired on or before 31-3-2005, but ad hoc extensions have been granted, and process for grant of fresh licences has been initiated by IRCTC.

Such licences/licensees shall be permitted to continue in terms of their ad hoc extension already granted and in any event till 30-6-2005, whichever is later. (Subject to satisfactory performance)

Note: It is expected that the process of grant of fresh licence shall be completed by 30-6-2005. (A three-month period from today).

Category III

In cases where licences granted have expired on or before 31-3-2005, but ad hoc extensions have been granted and process for grant of fresh licences has not been initiated by IRCTC.

Such licences/licensees shall be permitted to continue in terms of their ad hoc extension already granted and in any event till 30-6-2005, whichever is later. (Subject to satisfactory performance.)

Note: This will give a three-month window for finalisation of fresh licences.

Category ;IV

In cases where licences granted are to expire after 31-3-20005.

Such licences/licensees shall be granted ad hoc extension at least up to 30-6-2005 and until such time that the process of grant of licence of fresh licence is completed by IRCTC. (Subject to satisfactory

performance.)

11. Learned counsel appearing for the appellants are satisfied with the categorisation made and pray that their cases be dealt with in accordance with the categorisation made.

12. Civil Appeals Nos. 4899 of 2002, 4900 of 2002, 4901 of 2002, 48 of 2005 and Special Leave Petition (C) No. 5353 of 2003 are disposed of sustaining the judgment of the High Court with a direction to the Indian Railways/IRCTC to identify the caterers falling in either of the four categories and deal with them as per the above-mentioned categories.

13. Nothing stated herein shall preclude the Indian Railways/IRCTC from granting ad hoc extensions in the interest of general public travelling in the trains. Such extension, however, shall not create any legal right in the licensee's favour. The appellant(s) shall deposit arrears of licence fee, if any, within a period of two months from today. In case the appellant(s) fail to deposit the arrears, as directed, the Indian Railways/IRCTC would be at liberty to terminate the licences forthwith and to make recovery of the arrears in accordance with law.

14. These appeals and special leave petition are disposed of in the above terms".

Once the challenge to the Catering Policy of 1999 has been considered upto Hon'ble the Supreme Court in a comprehensive manner, it does not require any fresh consideration by this Court. Accordingly, I do not find any merit in the present petition as regards challenge to the Catering Policy of 1999 is concerned.

It is further not in dispute that members of the petitioners' association subsequently filed Civil Writ Petition No. 11029 of 2005 (The Jullandhar City Railway Station Vendors Sale and Supply Society Ltd. and another v. Union of India and Others) in which the same Catering Policy 1999 was under challenge before this Court and after notice to the respondents, writ petition was dismissed on May 2, 2006 following the judgment of Hon'ble the Supreme Court in Civil Appeal No. 4897 of 2002 (***N.B. Krishna Kurup v. Union of India and others***). Even the contention of learned counsel for the petitioners that policy in question is not applicable to them is also totally

misconceived. A bare perusal of the policy shows that same applies to all the licensees including refreshment room static unit as well as trolleys selling different commodities like snacks, tea/coffee, juice/milk items etc. In the present case, it is admitted case of the petitioner that they are running stalls/trolleys, Tea Shops at various Railway Stations selling snacks, mineral water, tea, coffee and milk etc. Even in terms of Indian Railways Commercial Manual Vol. II para 2801 in Chapter XXVIII scope of catering and vending service include restaurant, refreshment rooms, restaurant dining, buffet cars and other forms of vending such as stalls, trolleys, train-side vending etc.

Accordingly, the writ petition is disposed of in terms of the judgment of Hon'ble the Supreme Court in ***N.B. Krishna Kurup's case*** *(supra).*

(Rajesh Bindal)
Judge

December 12, 2007
"DK"